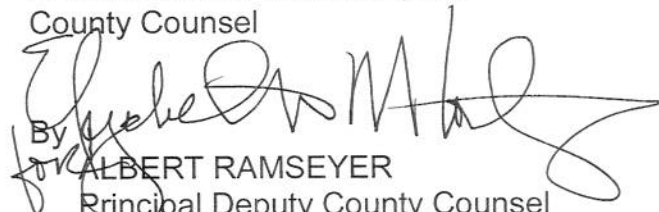


ANALYSIS

This ordinance amends Chapter 4.62 of Title 4, Utility User Tax, of the Los Angeles County Code, relating to the tax imposed on communications, electricity and gas usage in the unincorporated areas of the County. This ordinance would reduce the tax rate imposed on such usage from five percent (5%) to four and one-half percent (4.5%); update the definitions to provide for equal treatment of taxpayers regardless of technology used; and make other technical or non-substantive changes to clarify the language and for internal consistency. This ordinance will become effective only after approval by a majority of the qualified voters in the unincorporated areas of the County voting in an election on the issue.

RAYMOND G. FORTNER, JR.
County Counsel

By 
ALBERT RAMSEYER
Principal Deputy County Counsel
Government Services Division

AR:sc

07/07/08 (requested)

ORDINANCE NO. 2008-0072

An ordinance amending Title 4 - Revenue and Finance of the Los Angeles County Code, relating to the tax imposed on charges for communications, electricity and gas usage.

The People of the County of Los Angeles ordain as follows:

SECTION 1. Chapter 4.62 is hereby amended to read as follows:

4.62 UTILITY USER TAX

~~4.62.010 Short title.~~

~~4.62.020 Tax imposed.~~

~~4.62.030 Purpose of this chapter.~~

~~4.62.040 Definitions.~~

~~4.62.050 Constitutional exemptions.~~

~~4.62.051 Senior citizen exemption.~~

~~4.62.060 Telephone user tax.~~

~~4.62.080 Electricity user tax.~~

~~4.62.090 Gas user tax.~~

~~4.62.130 Interest and penalty.~~

~~4.62.140 Actions to collect.~~

~~4.62.150 Duty to collect Procedures.~~

~~4.62.160 Additional powers and duties of tax administrator.~~

~~4.62.170 Assessment—Administrative remedy.~~

~~4.62.180 Records.~~

~~4.62.190 Refunds.~~

~~4.62.200 Delays in implementation.~~

~~4.62.210 Severability.~~

~~4.62.220 Termination or suspension of utility user tax.~~

4.62.010 Short title.

4.62.020 Tax imposed.

4.62.030 Definitions.

4.62.040 Constitutional, statutory, and other exemptions.

4.62.050 Senior citizen exemption.

4.62.060 Communication user tax.

4.62.070 Electricity user tax.

4.62.080 Gas user tax.

4.62.090 Collection of tax from service users receiving direct purchase of gas or electricity.

4.62.100 Bundling taxable items with non-taxable items.

4.62.110 Substantial nexus /minimum contacts.

4.62.120 Duty to collect--procedures.

4.62.130 Collection penalties – service suppliers.

4.62.140 Actions to collect.

4.62.150 Deficiency Determination and Assessment – Tax Application Errors.

4.62.160 Administrative remedy - non-paying service users.

4.62.170 Additional powers and duties of the tax administrator.

4.62.180 Records.

4.62.190 Refund claims.

4.62.200 Appeals.

4.62.210 Severability.

4.62.220 Notice of changes to ordinance.

4.62.230 Effect of state and federal reference/authorization.

4.62.240 Independent audit of tax collection, exemption, remittance, and expenditure.

4.62.250 Remedies cumulative.

4.62.260 Interaction with Prior Tax.

4.62.010 Short title.

This chapter shall be known as the "Utility User Tax Ordinance."

4.62.020 Tax imposed.

There is ~~established~~ continued and imposed, ~~on January 22, 1991, the effective date of the ordinance codified in this chapter,~~ a utility user tax in the manner and at the rates set forth in this chapter.

~~4.62.030 Purpose of this chapter.~~

~~———— This chapter is enacted solely to raise revenue for the general governmental purposes of the county. All of the proceeds from the tax imposed by this chapter shall be placed in the county's general fund and used for the usual current expenses of the county.~~

~~4.62.040~~ **4.62.030 Definitions.**

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

A. ~~"Person" means any domestic or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, Massachusetts business or common law trust, society, or individual, and shall include a municipal corporation.~~ "Ancillary telecommunication services" means services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to the following services:

1. "Conference bridging service," which is an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

2. "Detailed telecommunications billing service," which is an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

3. "Directory assistance," which is an ancillary service of providing telephone number information, and/or address information.

4. "Vertical service," which is an ancillary service that is offered in

connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

5. "Voice mail service," which is an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

B. "County" means the county of Los Angeles. "Billing address" means the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

C. "Telephone corporation," "electrical corporation," and "gas corporation," shall have the same meanings as defined in Sections 215.5, 222, and 234, respectively, of the Public Utilities Code of the state of California, as said sections existed on January 1, 1975. "Electrical corporation" shall be construed to include any municipality or franchised agency engaged in the selling or supplying of electrical power or water to a service user. "County" means the County of Los Angeles.

D. "Tax administrator" means the treasurer and tax collector of the county of Los Angeles. "Communication services" means: "telecommunication services" and "ancillary telecommunication services."

E. "Service supplier" means a utility company which receives taxes paid and remits same as imposed by this chapter. "Gas" means natural or manufactured gas or any alternate hydrocarbon fuel, which may be substituted therefor.

F. "Service user" means a person required to pay a tax imposed by this

~~chapter.~~ "Mobile telecommunications service" has the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations thereunder.

G. "Month" means a calendar month.

H. ~~"Telephone services" means services which provide the privilege of telephone communication with substantially all persons having telephone stations which are part of such telephone system.~~ "Non-utility service supplier" means:

1. A service supplier, other than a supplier of electric distribution services to all or a significant portion of the County, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator (42 U.S.C.S. Section 16451), municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

2. An electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the County, which sells or supplies electricity or supplemental services to electricity users within the County; or

3. A gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the County, which sells or supplies gas or supplemental services to gas users within the County.

I. "Paging service" means a "telecommunications service" that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

J. "Person" means, without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and non-profit), cooperative, receiver, trustee, guardian, or other representative appointed by order of any court. For purposes of this chapter, "person" does not mean any federal or state agency, or subdivision thereof, including the County.

K. "Place of primary use" means the street address representative of where the customer's use of the communications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

L. "Post-paid telecommunication service" means the telecommunication service obtained by making a payment on a communication-by-communication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.

M. "Prepaid telecommunication service" means the right to access telecommunication services, which must be paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

N. "Private telecommunication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity,

extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points (i.e., the location where the customer either inputs or receives the communications).

O. "Service address" means the residential street address or the business street address of the service user. For a communication service user, "service address" means either:

1. The location of the service user's communication equipment from which the communication originates or terminates, regardless of where the communication is billed or paid; or

2. If the location in subsection (1) of this definition is unknown (e.g., mobile telecommunications service or voice over internet protocol (VoIP) service), the service address means- the location of the service user's place of primary use.

3. For prepaid telecommunication service, "service address" means the location associated with the service number.

P. "Service supplier" means any person, including the County, who provides or sells communication, electric, or gas service to a user of such services within the County. The term shall include any person required to collect, or self-collect under section 4.62.090 of this chapter, and remit a tax as imposed by this chapter, including its billing agent in the case of electric, or gas service suppliers.

Q. "Service user" means a person required to pay a tax imposed by this chapter.

R. "State" means the State of California.

S. "Streamlined Sales and Use Tax Agreement" means the multi-state agreement commonly known and referred to as the Streamlined Sales and Use Tax Agreement, and as it is amended from time to time.

T. "Tax Administrator" means the Treasurer and Tax Collector of the County of Los Angeles or his or her designee.

U. "Telecommunications services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used. The term "telecommunications services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that are functionally integrated with "telecommunication services." "Telecommunications services" include, but are not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: intrastate, interstate, and international communication services, ancillary telecommunication services; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); and 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to pre-recorded or live service).

"Telecommunication services" shall not include digital downloads that are not "ancillary telecommunication services," such as books, music, ringtones, games, and similar digital products, nor shall it apply to such internet services as browsers, search engines, and email. "Telecommunication services" shall not include cable or video programming services that are subject to a cable or video service franchise fee.

V. "VoIP" or "Voice over Internet Protocol" means the technology used to transmit real-time, two-way voice conversations over a data network using Internet Protocol.

W. "800 service" means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

X. "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.

4.62.050 4.62.040 Constitutional, statutory, and other exemptions.

A. Nothing in this chapter shall be construed as imposing a tax upon any person or service when the imposition of such tax upon that person such person or

service would be in violation of ~~California~~ a federal or state statute, the Constitution of the United States, or the Constitution of the ~~state of California~~ State.

B. Any service user that is exempt from the tax imposed by this chapter pursuant to subsection (A) of this section shall file an application with the Tax Administrator for an exemption. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all utility service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in utility service suppliers so that the Tax Administrator can properly notify the new utility service supplier of the service user's tax exempt status. A service user that fails to comply with this section shall not be entitled to a refund of utility users' taxes collected and remitted to the Tax Administrator from such service user as a result of such noncompliance.

The decision of the Tax Administrator may be appealed pursuant to section 4.62.200 of this chapter. Filing an application with the Tax Administrator and appeal to the Chief Executive Officer pursuant to section 4.62.200 of this chapter is a prerequisite to a suit thereon.

~~4.62.051~~ 4.62.050 Senior citizen exemption.

A. The taxes imposed by this chapter shall not apply to any person who is the head of a household and both:

1. Is 62 years old or older; and

2. Receives supplemental social security benefits.

B. To qualify for the exemption set forth in this section, the person shall file an application in the form, time and manner prescribed by the ~~tax administrator~~ Tax Administrator.

C. The ~~tax administrator~~ Tax Administrator shall, within 60 days of receipt of an application for exemption, determine whether the exemption is granted, and if so, notify the service supplier.

D. The exemption granted to a person pursuant to this section shall become effective on the beginning of the first regular billing period which commences after the ~~tax administrator~~ Tax Administrator has notified the service supplier that an exemption has been granted.

4.62.060 Telephone user tax- Communication user tax.

A. There is hereby imposed a tax upon every person ~~other than a telephone corporation, electrical corporation, or grass corporation, a tax for use of intrastate, interstate and international telephone services in the unincorporated areas of the county~~ County using communication services. The tax imposed by this section shall be at the rate of five percent four and one-half percent (4.5%) of the charges made for such services and shall be ~~paid by the person paying for such services~~ collected from the service user by the communication services supplier or its billing agent. ~~Said tax shall apply to all charges billed to a telephone account having a situs in the unincorporated areas of the county, irrespective of whether a particular telephone service originates and/or terminates within the unincorporated areas of the county.~~ There is a rebuttable

presumption that communication services, which are billed to a billing or service address in the unincorporated areas of the County, are used, in whole or in part, within the boundaries of the unincorporated areas, and such services are subject to taxation under this chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the communication services.

B. ~~As used in this section, the term "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones except that, where such coin-operated service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due; nor shall the term "charges" include charges for any type of service or equipment furnished by a service supplier subject to public utility regulation during any period in which the same or similar services or equipment are also available for sale or lease from persons other than a service supplier subject to public utility regulation; nor shall the words "telephone communication services" include land mobile services or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations as said section existed on January 1, 1970. "Mobile telecommunications service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124). The Tax Administrator may issue and disseminate to communication service suppliers, which are subject to the tax collection requirements of this chapter, sourcing rules for the taxation~~

of other communication services, including but not limited to post-paid communication services, prepaid communication services, and private communication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation (e.g., Streamlined Sales and Use Tax Agreement).

C. ~~The tax imposed by this section shall be collected from the service user by the person providing the telephone services, or the person receiving payment for such services. The amount of the tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month, unless the due date occurs on a weekend or a holiday, in which case the due date is the first business day following. Taxes shall be deemed remitted on the date received by the tax administrator, or on the date postmarked if remitted by first class United States mail with postage fully prepaid. With prior written approval of the tax administrator, remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers; or at the option of the person required to collect and remit the tax, an estimated amount of tax collected, measured by the tax bill in the previous month. The Tax Administrator may issue and disseminate to communication service suppliers, which are subject to the tax collection requirements of this chapter, an administrative ruling identifying those communication services, or charges therefor, that are subject to or not subject to the tax of subsection (A) above.~~

D. ~~Notwithstanding the provisions of subsection A, the tax imposed under this section shall not be imposed upon any person for using telephone communication services to the extent that the amounts paid for such services are exempt from or not~~

subject to the tax imposed under Section 4251 of the Internal Revenue Code. As used in this section, the term "telecommunication services" shall include, but are not limited to charges for: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features(including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory, administrative and other cost recovery charges; local number portability charges; and text and instant messaging. "Telecommunication services" shall not include: digital downloads that are not "ancillary telecommunication services," such as books, music, ringtones, games, and similar digital products.

E. To prevent actual multi-jurisdictional taxation of communication services subject to tax under this section, any service user, upon proof to the Tax Administrator that the service user has previously paid the same tax in another state or local jurisdiction on such communication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or local jurisdiction; provided, however, the amount of credit shall not exceed the tax owed to the County under this section.

F. The tax on communication services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

~~4.62.080~~ 4.62.070 Electricity user tax.

A. There is hereby imposed a tax on every person ~~other than a telephone corporation, electrical corporation, or gas corporation,~~ using electrical energy electricity in the unincorporated areas of the ~~county~~ County. The tax imposed by this section shall be at the rate of ~~five percent~~ four and one-half percent (4.5%) of the charges made for such energy and shall be paid by the person paying for such energy electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent. The tax applicable to electrical energy provided by a non-utility supplier shall be determined by applying the tax rate to the equivalent charge the service user would have incurred if the energy used had been provided by the electrical corporation franchised by the county. Rate schedules for this purpose shall be available from the county. Non-utility suppliers shall install, maintain and use an appropriate utility-type metering system which will enable compliance with this section. "Charges," as used in this section, shall include charges made for metered energy and charges for service, including customer charges, service charges, standby charges, charges for temporary services, demand charges, annual and monthly charges, and any other charge authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission.

B. As used in this section, ~~the term "using electrical energy" shall not be construed to mean the storage of such energy by a person in a battery owned or~~

~~possessed by him for use in an automobile or other machinery or device apart from the premises upon which the energy was received, provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; nor shall the term include the mere receiving of such energy by an electric public utility or governmental agency at a point within the unincorporated areas of the county for resale; nor shall the term include the use of such energy in the production or distribution of water by a public utility or a governmental agency; nor shall the term include the use of electrical energy used in the conduct of business by a telephone corporation, electrical corporation, or gas corporation; nor shall the term include the use of electrical energy after February 28, 1991 by a farmer using such energy for the sole purpose of pumping water for irrigating food and fiber crops raised for commercial sale, provided said farmer has applied for and received from the tax administrator written confirmation that the farmer's operations are commercial in nature and that the electrical energy is used solely for the purpose of pumping water for agricultural irrigation. As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:~~

1. Energy charges;
2. Distribution or transmission charges;
3. Metering charges;
4. Stand-by, reserves, firming, ramping, voltage support, regulation,

emergency, or other similar charges for supplemental services to self-generation service users;

5. Customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees or surcharges which are necessary for or common to the receipt, use or enjoyment of electric service; and

6. Charges, fees, or surcharges for electricity services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

C. ~~The tax imposed in this section shall be collected from the service user by the person supplying such energy. The amount of tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month, unless the due date occurs on a weekend or a holiday, in which case the due date is the first business day following. Taxes shall be deemed remitted on the date received by the tax administrator, or on the date postmarked, if remitted by first class United States mail with postage fully prepaid. With prior written approval of the tax administrator, remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers. As used in this section, the term "charges" shall include the~~

value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity.

D. The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the unincorporated areas of the County, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: (1) necessary for or common to the receipt, use or enjoyment of electric service; or (2) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (A) above.

E. As used in this section, the term "using electricity" shall not include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the County for resale.

F. The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in section 4.62.090 of this chapter. All other taxes on charges for electricity imposed by this section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall

be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

4.62.090 4.62.080 Gas user tax.

A. ~~There is hereby imposed a tax on every person other than a telephone corporation, electrical corporation, or gas corporation, using, in the unincorporated areas of the county, gas which is delivered through mains or pipes~~ using gas in the unincorporated areas of the County, which is transported and delivered through a pipeline or pipeline distribution system or by mobile transport. The tax imposed by this section shall be at the rate of ~~five percent~~ four and one-half percent (4.5%) of the charges made for such gas ~~and shall be paid by the person paying for such gas, including all services related to the storage, transportation and delivery of such gas.~~ The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent, and shall apply to all uses of gas, including but not limited to, heating electricity generation, or the use of gas as a component of a manufactured product. ~~"Charges," as used in this section, shall include charges made~~

~~for metered gas and charges for service, including customer charges, service charges, and annual and monthly charges and any other charge authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission.~~

B. ~~There shall be excluded from the base on which the tax imposed in this section is computed:~~

~~1. Charges made for gas which is to be resold and delivered through mains or pipes;~~

~~2. Charges made for gas sold for use in the generation of electrical energy or for the production or distribution of water by a public utility or governmental agency;~~

~~3. Charges made for gas used in the propulsion of a motor vehicle, as that phrase is defined in the Vehicle Code of the state of California, utilizing natural gas;~~

~~4. Charges made for gas used by a non-utility supplier to generate electrical energy for its own use, or for sale to others, provided the electricity so generated is subject to the tax in accordance with Section 4.62.060; and~~

~~5. Charges made for gas which is consumed after February 28, 1991 by a commercial farmer using such gas for the sole purpose of pumping water for irrigating food and fiber crops raised for commercial sale, provided said farmer has applied for and received from the tax administrator written confirmation that the farmer's operations are commercial in nature and that gas is used solely for the purpose of pumping water for agricultural irrigation. As used in this section, the term "charges" shall apply to all services, components and items for gas service that are necessary for or common to the receipt, use or enjoyment of gas service; or, currently are or~~

historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

1. The commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;

2. Gas transportation charges (including interstate charges to the extent not included in commodity charges);

3. Storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;

4. Capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary for or common to the receipt, use or enjoyment of gas service; and,

5. Charges, fees, or surcharges for gas services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a

bundled or line item basis on the customer billing.

C. ~~The tax imposed in this section shall be collected from the service user by the person selling the gas. The amount of tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month, unless the due date occurs on a weekend or a holiday, in which case the due date is the first business day following. Taxes shall be deemed remitted on the date received by the tax administrator, or on the date postmarked, if remitted by first class United States mail with postage fully prepaid. With prior written approval of the tax administrator, remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas.~~

D. The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the unincorporated areas of the County, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: (1) necessary for or common to the receipt, use or enjoyment of gas service; or (2) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such

components and items shall be subject to the tax of subsection (A) above.

E. There shall be excluded from the calculation of the tax imposed in this section, charges made for gas which is to be resold and delivered through a pipeline distribution system.

F. The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in section 4.62.090 of this chapter. All other taxes on charges for gas imposed by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator, on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

4.62.090 Collection of tax from service users receiving direct purchase of gas or electricity.

A. Any service user subject to the tax imposed by section 4.62.070 or by section 4.62.080 of this chapter, which produces gas or electricity for self-use; which

receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this chapter; or which, for any other reason, is not having the full tax collected and remitted by its service supplier, a non-utility service supplier, or its billing agent on the use of gas or electricity in the unincorporated areas of the County, including any related supplemental services, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use, based on the charges for, or value of, such gas or electricity, or supplemental services, as provided in subsection (B). In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use, an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator in writing, may be applied against any subsequent tax bill that becomes due.

B. The Tax Administrator may require said service user to identify its non-utility service supplier and otherwise provide the following (subject to audit): invoices; books of account; or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the

equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the County. Rate schedules for this purpose shall be available from the County.

4.62.100 Bundling taxable items with non-taxable items.

If any nontaxable charges are combined with and not separately stated from taxable service charges on the service user bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation of the taxable and non-taxable services.

4.62.110 Substantial nexus / minimum contacts.

For purposes of imposing a tax or establishing a duty to collect and remit a tax

under this chapter, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any communication service (including VoIP) used by a person with a service address in the unincorporated areas of the County, which service is capable of terminating a call to another person on the general telephone network, shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this chapter. A service supplier shall be deemed to have sufficient activity in the unincorporated areas of the County for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the unincorporated areas of the County, directly or through an agent or subsidiary, a place of business of any nature; solicits business in the unincorporated areas of the County by employees, independent contractors, resellers, agents or other representatives; solicits business in the unincorporated areas of the County on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the unincorporated areas of the County or distributed from a location within the unincorporated areas of the County; or advertises in newspapers or other periodicals printed and published within the unincorporated areas of the County or through materials distributed in the unincorporated areas of the County by means other than the United States mail or if there are activities performed in the unincorporated areas of the County on behalf of the service supplier that are significantly associated with the service

supplier's ability to establish and maintain a market in the unincorporated areas of the County for the provision of services that are subject to a tax under this chapter.

4.62.150 4.62.120 Duty to collect--procedures.

A. Collection by Service Suppliers. The duty of service suppliers to collect and remit the taxes imposed by this chapter shall be performed as follows:

A. 1. The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of charges made in accordance with the regular billing practices of the service supplier. ~~Except in those cases where a service user pays the full amount of said charges but does not pay any portion of a tax imposed by this chapter, or where a service user has notified a service supplier that he is refusing to pay a tax imposed by this chapter which said service supplier is required to collect, if the amount paid by a service user is less than the full amount of the charge and the tax which has accrued for the billing period, such amount and any subsequent payments by a service user shall be applied to the utility charge first. Any remaining balance shall be applied to taxes due.~~ Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, section 4.62.160 shall apply.

B. 2. The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the

service user where all charges normally included in such regular billing are subject to the provisions of this chapter. Where a ~~person~~ service user receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

B. Filing Return and Payment. Each person required by this chapter to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator, on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code section 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information that is exempt from the disclosure provisions of the Public Records Act, Government Code section 6250, et seq.

4.62.130 Interest and penalty Collection penalties – service suppliers.

A. ~~Taxes collected by a service supplier from a service user which are not remitted to the tax administrator on or before the due dates provided in this chapter are delinquent and are subject to penalties and interest~~ are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including

electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the County's account on the following business day.

B. ~~Any person who fails to remit taxes collected in the time required by this chapter shall pay a penalty of five percent of the amount of the tax, and if not remitted within two working days after the date of delinquency, shall pay a total penalty of 20 percent of the amount of tax owed. Such penalty shall attach to the amount of tax due and shall be paid by the person required to collect and remit the tax.~~ If the person required to collect and/or remit the utility users' tax fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen (15%) percent of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of one and one-half (1.5%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

C. ~~When fraud or gross negligence in reporting and remitting tax collections is discovered, the tax administrator shall have power to impose additional penalties of 20 percent of taxes owed upon persons required to collect and remit taxes under the provisions of this chapter. The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes pursuant to the~~

provisions of this ~~Chapter~~ chapter for fraud or gross negligence in reporting or remitting at the rate of fifteen (15%) percent of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

D. ~~Any person required to remit to the tax administrator delinquent taxes as required in this section, shall pay interest at the rate of one and one-half percent (1.5%) per month, or portion thereof, on the amount of tax owed exclusive of penalties, from the date on which the tax first became delinquent until paid. For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid.~~

E. ~~Notwithstanding the provisions of subsections B and D, no penalty or interest shall be applied if delinquencies are the result of natural disasters or other phenomena beyond the control of the person charged with collecting and remitting the tax, provided the person being delinquent notifies the tax administrator as soon as normal communications permit. Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this chapter to be consistent with any uniform standards or procedures that are mutually agreed upon by other public agencies imposing a utility users tax, or otherwise legally established, to create a central payment location or mechanism.~~

4.62.140 Actions to collect.

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the ~~county~~ County. Any such tax collected from a service user which has not been remitted to ~~the tax administrator~~ the

Tax Administrator shall be deemed a debt owed to the county County by the person required to collect and remit the tax and shall no longer be a debt of the service user. Any person owing money to the county County under the provisions of this chapter shall be liable in an action brought in the name of the county County for the recovery of such amount, including penalties and interest as provided for in this chapter, along with any collection costs incurred by the County as a result of the person's noncompliance with this chapter, including, but not limited to, reasonable attorneys fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under 11 U.S.C.A. Section 507(a)(8)(C).

4.62.150 ~~Duty to Collect--Procedures~~ Deficiency determination and assessment – tax application errors.

A. The Tax Administrator shall make a deficiency determination if he or she determines that any service supplier or service user required to pay, collect, and/or remit taxes pursuant to the provisions of this chapter has failed to pay, collect, and/or remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute proceedings under this section 4.62.150 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. The Tax Administrator shall mail a notice of such deficiency determination to the person or entity allegedly owing the tax, which notice shall refer briefly to the amount of the taxes owed, the collection penalties imposed pursuant to section 4.62.130, plus interest at the rate of one and one-half (1.5%) percent per month, or any

fraction thereof, on the amount of the tax from the date on which the tax should have been received by the County. Within fourteen (14) calendar days after the date of service of such notice, the person or entity allegedly owing the tax may request in writing to the Tax Administrator for a hearing on the matter.

C. If the person or entity allegedly owing the tax fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the County. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person or entity at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person or entity to produce specific records at such hearing, such notice may designate the records requested to be produced.

D. At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person or entity owing the tax. The decision of the Tax Administrator may be appealed pursuant to section 4.62.200 of this chapter.

E. Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. As provided in section 4.62.130, the penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of one and one-half (1.5%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the County seeking payment of a tax assessed under this chapter shall commence from the date of delinquency as provided in this subsection (E).

F. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

4.62.170 Assessment -- Administrative remedy 4.62.160 Administrative remedy – non-paying service users.

~~A. The tax administrator may assess the service user for taxes not paid to the service supplier.~~

~~——B.——Whenever the tax administrator~~ Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by ~~such users~~ the service user from the amounts ~~remitted~~ the service user remits to a person required to collect the tax, ~~or that a service user has refused to pay the amount of tax to such person,~~ or whenever the ~~tax administrator~~ Tax Administrator deems it in the best interest of the ~~county~~ County, he or she may relieve such person of the obligation to

collect the taxes due under this chapter from certain named service users for specified billing periods. To the extent the service user has failed to pay the amount of tax owed for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the County with the names and addresses of such service users, the amounts of taxes owed, and the associated billing periods, under the provisions of this chapter. Nothing herein shall require that the Tax Administrator institute proceedings under this section if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of fifteen percent (15%) of the total tax that is owed, and shall pay interest at the rate of one and one-half (1.5%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

C. ~~The service supplier shall provide the county with amounts refused, along with the names, addresses and reasons of the service users refusing to pay the tax imposed under provisions of this chapter. Whenever the service user has failed to pay the amount of tax for a period of two or more billing periods, the tax administrator may relieve the service supplier of the obligation to collect taxes due.~~ The Tax Administrator shall notify the non-paying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the

person required to collect the tax; or, should the service user have a change of address, to his or her last known address.

D. ~~The tax administrator shall notify the service user that he has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the service user by handing it to him personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have changed his address, to his last known address. If a service user fails to remit the tax to the tax administrator within 15 days from the date of the service of the notice upon him, which shall be the date of mailing if service is not accomplished in person, a penalty of 25 percent of the amount of the tax set forth in the notice shall be imposed, but not less than \$5.00. The penalty shall become part of the tax herein required to be paid. If the service user fails to remit the tax to the Tax Administrator within thirty (30) days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of fifteen percent (15%) of the amount of the total tax that is owed, along with the interest at the rate of one and one-half (1.5%) per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the County.~~

4.62.160 4.62.170 Additional powers and duties of tax administrator Tax Administrator.

A. The tax administrator Tax Administrator shall have the power and duty,

~~and is hereby directed~~, to enforce each and all of the provisions of this chapter.

B. ~~The tax administrator~~ Tax Administrator ~~shall have the power to may~~ adopt administrative rules and regulations ~~not inconsistent~~ consistent with provisions of this chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such administrative rules and regulations shall be on file in the ~~tax administrator's~~ Tax Administrator's office. To the extent that the Tax Administrator determines that the tax imposed under this chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of Government Code Section 53750, nor is such determination a waiver of the County's ability to impose the tax in full. The Tax Administrator is not authorized to amend the taxing methodology for purposes of Government Code Section 53750.

C. ~~The tax administrator~~ Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary ~~from~~ the strict requirements of this chapter ~~so that collection of any tax imposed herein may be made in conformance with~~ and thereby (1) conform to the billing procedures of a particular service supplier so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter; or (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the ~~tax administrator's~~

office Tax Administrator's office and are voidable by the Tax Administrator or the County at any time.

D. The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this chapter, of any person required to collect and/or remit a tax pursuant to this chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to section 4.62.150 of this chapter for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

E. Upon receipt of a written request of a service supplier, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this chapter for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of one and one-half (1.5%) percent per month, prorated for any portion thereof.

DE. The tax-administrator Tax Administrator shall determine the eligibility of

any person who asserts a right to exemption from, or a refund of, the tax imposed by this chapter. ~~The tax administrator shall provide the service supplier with the name of any person who the tax administrator determines is exempt from the tax imposed hereby, together with the address and account number to which service is supplied to any such exempt person. The tax administrator shall notify the service supplier of the termination of any person's right to exemption hereunder, or the change of any address to which service is supplied to any exempt person.~~

G. Notwithstanding any provision in this chapter to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this chapter if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration industry practice or other precedence.

4.62.180 Records.

A. It shall be the duty of every person required to collect and remit to the county County any tax imposed by this chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and remittance to the ~~tax administrator~~ Tax Administrator, which records ~~the tax administrator~~ Tax Administrator shall have the right to inspect at all reasonable times.

B. The County, through the Board of Supervisors, may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies

of all records deemed necessary by the Tax Administrator to establish compliance with this chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the County on or before the due date, provided that such person shall reimburse the County for all reasonable travel expenses incurred by the County to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the County to conduct the inspection.

C. The Tax Administrator is authorized to execute a non-disclosure agreement approved by the County Counsel to protect the confidentiality of customer information pursuant to Revenue and Tax Code sections 7284.6 and 7284.7.

D. If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: (1) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the County; and, (2) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the County .

E. If any person subject to record-keeping under this section unreasonably denies the Tax Administrator access to such records, or fails to produce the information

requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of \$500 on such person for each day following: 1) the initial date that the person refuses to provide such access; or, 2) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this chapter.

4.62.190 Refunds. Refund claims.

A. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by ~~the tax administrator under this chapter~~ the Tax Administrator under this chapter from a service user or service supplier, it may be refunded as provided in this section. However, if the appeals procedure set forth in section 4.62.200 is applicable, that procedure must first be exhausted before a refund may be had under this section.

B. ~~Notwithstanding the provisions of subsection A of this section, a service-supplier may, with prior written approval from the tax administrator, claim a refund or take as credit against taxes collected and remitted the amount overpaid; The Tax Administrator may refund any tax that has been overpaid, paid more than once, or erroneously or illegally collected or received when it is established that the service user from whom the tax has been collected did not owe the tax; by the Tax Administrator under this chapter from a service user or service supplier, provided however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the person required to collect and remit. A service-~~

~~supplier that has collected any amount of tax in excess of the amount of tax imposed by this chapter and actually due from a service user, may refund such amount to the service user and may, with prior written approval of the tax administrator, claim credit for such overpayment against the amount of tax which is due upon any other monthly returns, provided such credit is claimed in a return dated no later than three years from the date of overpayment.~~

~~—— C. — No that no refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto or his or her guardian, executor, or administrator has submitted a written claim to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitled thereto. Nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim under penalty of perjury as provided in this subsection.~~

B. The Tax Administrator, where the claim is less than the settlement authority established in title 2.14.020 of the County Code, or the Board of Supervisors where the claim is in excess of that amount, shall act upon the refund claim within forty-five (45) days of the initial receipt of the refund claim. Said decision shall be final. If the Tax Administrator/Board of Supervisors fails or refuses to act on a refund claim within the forty-five (45) day period, the claim shall be deemed to have been rejected by the Tax Administrator/Board of Supervisors on the forty-fifth (45th) day. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in Government Code Section 913.

C. The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon. Any action brought against the County pursuant to this section shall be subject to the provisions of Government Code Sections 945.6 and 946.

~~D. Notwithstanding other provisions of this section, whenever a service-supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this chapter on the amount of such refunded charges shall also be refunded to service users, and the service supplier may, with prior written approval of the tax administrator, take a credit for such refunded taxes against the amount of tax which is due upon the next monthly returns. In the event this chapter is repealed, the amounts of any refundable taxes will be borne by the county.~~

Notwithstanding the notice provisions of subsection (A) of this section, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this chapter, to claim credit for such overpayment against the amount of tax which is due the County upon a subsequent monthly return(s) to the Tax Administrator, provided that: i) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; ii) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, iii) in the case of an overpayment by a service user to the service supplier that has been remitted to the County, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

E. Notwithstanding subsections (A) through (D) above, a service supplier shall be entitled to take any overpayment as a credit against an underpayment whenever such overpayment has been received by the County within the three (3) years next preceding a deficiency determination or assessment by the Tax Administrator in connection with an audit instituted by the Tax Administrator pursuant to section 4.62.170. A service supplier shall not be entitled to said credit unless it first clearly establishes to the Tax Administrator the right to the credit by written records showing entitlement thereto. Under no circumstances shall an overpayment taken as a credit against an underpayment pursuant to this subsection qualify a service supplier for a refund to which it would not otherwise be entitled under the one-year written claim requirement of this section.

4.62.200 Delays in implementation Appeals.

~~A. Each service supplier shall immediately implement collection procedures in accordance with the effective dates contained in this chapter.~~

~~B. Notwithstanding the provisions of subsection A, the tax administrator may grant a service supplier not presently franchised by the county an extension in the time to implement tax collection procedures to a date not later than July 1, 1991, provided within 10 days of January 22, 1991, the effective date of this chapter, the service supplier certifies in writing to the tax administrator that operational limitations prevent the service supplier from implementing tax collection procedures in accordance with the effective dates contained in this chapter.~~

~~C. Notwithstanding anything in this chapter to the contrary, if a service supplier~~

~~has been granted an extension in the time to implement tax collection procedures, taxes accrued for the period of time prior to implementation shall be due and collected in the first regular billing following the incorporation of tax collection procedures, or in accordance with a collection schedule authorized by the tax administrator pursuant to subsection E.~~

~~D. The tax administrator may enter into an agreement with any service supplier not presently franchised by the county to provide for reimbursement, within the limits set forth herein, of the service supplier's actual costs incurred in implementing procedures to collect the tax accrued from the time the tax became effective to the time the service supplier implements tax collection procedures in accordance with the requirements of this section. Any agreement entered into pursuant to this subsection D shall permit the service supplier to be reimbursed by retaining up to 10 percent of such accrued taxes collected, but not to exceed (1) \$200,000.00 if all or a part of the previously accrued tax is included in all customer billings issued not later than April 30, 1991; (2) \$150,000.00 if all or a part of the previously accrued tax is included in all customer billings issued after April 30, 1991 but on or before May 31, 1991; or \$100,000.00 if all or a part of the previously accrued tax is included in all customer billings issued after May 31, 1991, but on or before June 30, 1991.~~

~~E. In any agreement entered into pursuant to subsection D, the tax administrator may authorize the service supplier to collect previously accrued taxes over a period of two or more months, provided that all such taxes are collected and remitted to the tax administrator no later than November 30, 1991.~~

A. Any person directly aggrieved by a decision of the Tax Administrator shall

be required to comply with the appeals procedure set forth in this section. A "decision" of the Tax Administrator includes any decision, determination, assessment, or administrative ruling made pursuant to this chapter. This section does not apply to a decision relating to a refund pursuant to section 4.62.190.

B. The chief executive officer, or his or her designee shall hear all appeals filed pursuant to this section. A written notice of appeal shall be filed with the clerk of the board of supervisors, or his or her designee, within fourteen (14) days of the decision so appealed.

C. Upon receipt of the notice of appeal, the clerk of the board, or his or her designee, shall schedule a hearing before a hearing officer selected by the chief executive officer, or his or her designee, within thirty (30) days from the receipt of the appeal. The appealing party shall be served with written notice of the time and place of the hearing at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent of the parties and the hearing officer.

D. Upon the conclusion of the hearing, the hearing officer shall consider any relevant evidence presented at the hearing and shall issue a written determination upholding, modifying or reversing the decision from which the appeal is taken. The hearing officer's determination shall be given within thirty (30) days after the conclusion of the hearing and shall state the reasons for the determination. The hearing officer's determination shall specify that the determination is final and conclusive. Any petition for judicial review shall be filed within ninety (90) days from the date of service of the hearing officer's determination.

4.62.210 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, ~~such invalidity shall not affect the validity of the~~ remaining portion of this chapter or any part thereof shall nonetheless remain in full force and effect. The Board of Supervisors of the County of Los Angeles hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared invalid.

4.62.220 ~~Termination or suspension of utility user tax~~ Notice of changes to ordinance.

~~The service supplier shall, upon notification, terminate or suspend any utility user tax commencing with the first full billing period which occurs after the effective day of such action by the board of supervisors.~~ If a tax under this chapter is added, repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of Public Utilities Code Section 799.

4.62.230 Effect of state and federal reference/authorization.

A. Unless specifically provided otherwise, any reference to a state or federal statute in this chapter means such statute as it may be amended from time to time, provided that such reference to a statute shall not include any subsequent amendment

thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease, as a result of excluding all or a part of a utility service, or charge therefor, from taxation. Only to the extent that voter approval would otherwise be required or a tax decrease would result, the prior version of the statute or its interpretation, shall remain applicable, for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute or new interpretation thereof shall be applicable to the maximum possible extent.

B. To the extent that the County's authorization to collect or impose any tax under this chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter.

4.62.240 Independent audit of tax collection, exemption, remittance, and expenditure.

The County shall annually verify that the taxes owed under this chapter have been properly applied, exempted, collected, and remitted in accordance with this chapter, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of

sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

4.62.250 Remedies cumulative.

All remedies and penalties prescribed by this chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the County shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

4.62.260 Interaction with prior tax.

A. Collection of Tax by Service Providers. Service providers shall begin to collect the tax imposed by this amended Chapter 4.62 as soon as feasible after the effective date of the chapter, but in no event later than permitted by Section 799 of the Public Utilities Code.

B. Satisfaction of Tax Obligation by Service Users. Prior to April 1, 2009, any person who pays the tax levied pursuant to Chapter 4.62 of this Code, as it existed prior to its amendment as provided herein, with respect to any charge for a service shall be deemed to have satisfied his or her obligation to pay the tax levied pursuant to chapter 4.62 as amended herein, with respect to that charge. The intent of this paragraph is to prevent the imposition of multiple taxes upon a single utility charge during the transition period from the prior Utility User Tax ordinance to the amended Utility User Tax.

ordinance (which transition period ends April 1, 2009) and to permit service providers or other persons with an obligation to remit the tax hereunder, during that transition period, to satisfy their collection obligations by collecting either tax.

C. In the event that a final court order should determine that the election enacting this Chapter 4.62 (as amended herein) is invalid for whatever reason, or that any tax imposed under this Chapter 4.62 (as amended herein) is invalid in whole or in part, then the taxes imposed under Chapter 4.62 of this Code, as it existed prior to its amendment as provided herein, shall automatically continue to apply with respect to any service for which the tax levied pursuant to this chapter has been determined to be invalid. Such automatic continuation shall be effective beginning as of the first date of service (or billing date) for which the tax imposed by this chapter is not valid. However, in the event of an invalidation, any tax (other than a tax that is ordered refunded by the court or is otherwise refunded by the County) paid by a person with respect to a service and calculated pursuant to this Chapter 4.62 (as amended herein) shall be deemed to satisfy the tax imposed under Chapter 4.62, as it existed prior to its amendment as provided herein, on that service, so long as the tax is paid with respect to a service provided no later than six months subsequent to the date on which the final court order is published.

SECTION 2. Effective Date. The amendments to this chapter shall become effective immediately upon the date of approval of this Ordinance by the people of the unincorporated areas of the County of Los Angeles at the Election of November 4, 2008.

SECTION 3. Validation of Prior Tax. The people of the unincorporated areas of the County of Los Angeles hereby validate and approve the past collection of the Utility User Tax under Chapter 4.62 of the County Code as it existed prior to the effective date of this Ordinance.

SECTION 4. Amendment or Repeal. Chapter 4.62 of the County Code may be repealed or amended by the Board of Supervisors without a vote of the people. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance. By approving this Ordinance, the people of the unincorporated areas of the County of Los Angeles affirm that the following actions shall not constitute an increase of the rate of a tax:

1. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the Board of Supervisors has acted to reduce the rate of the tax;
2. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance.
3. The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the

discontinuation of an exemption or exception specifically set forth in this Ordinance);
and

4. The collection of the tax imposed by this Ordinance, even if the County had, for some period of time, failed to collect the tax.

SECTION 5. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. By approving this Ordinance, the people declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

SECTION 6. Execution. The Chair of the Board of Supervisors is authorized to attest to the adoption of this Ordinance by the voters of the unincorporated areas of the County at the Election of November 4, 2008, by signing a certification as provided below:

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the people of the unincorporated areas of the County of Los Angeles voting on the 4th day of November, 2008.

[462NTARCC]



Glenn B. Bunker
Chair of the Board of Supervisors

ATTEST: SACHIA A. HAMAI
EXECUTIVE OFFICER
CLERK OF THE BOARD OF SUPERVISORS

By *Jo. Dunn*, Deputy

I hereby certify that pursuant to
Section 25103 of the Government Code,
delivery of this document has been made.

SACHIA A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By *Jo. Dunn*
Deputy